

I quote the Senator from West Virginia, Senator ROCKEFELLER, the primary cosponsor with Senator GORTON of Washington of this particular bill that we now have before the Senate:

The Senator from Kentucky and I have reached a significant agreement which I think achieves a significant goal in an eminently sensible manner. The amendment is before you and ensures for the first time that the Secretary of Commerce will collect—not “may collect” but “will collect”—comprehensive product liability insurance data which will be useful to us as policy makers at the Federal and State levels.

The amendment in effect makes it possible that should this issue be revisited, Congress will in fact have the facts before us. Okay. So what is in the amendment?

The amendment would require the Secretary of Commerce to report comprehensive information annually to the Congress on the effect of this product liability tort reform bill, should it pass, on those insurers, noninsurers, reinsurers, self-insurers, risk retention folks, who issue product liability insurance.

Now the Secretary of Commerce will collect data from these folks, and he can collect data from existing insurance statistical agencies. In other words, the bureaucracy factor is minimized. Mr. Chairman, because he can collect it from those who already produce it.

However, a key component of my agreement with the distinguished Senator from Kentucky provides that the committee report—and we crafted our language carefully here—will spell out for the Secretary what information is needed for comprehensive understanding of the issue. For example, insurers premiums and investment income, outlays, overhead, legal expenses, reserves, as well as claims paid as a result of settlement as opposed to claims paid as a result of adjudication.

Included in the report language will be a provision that the National Association of Insurance Commissioners has a set amount of time to work out an agreement with the Secretary of Commerce to require that insurers report data on claims paid out as a result of economic, noneconomic, and punitive damages. That has been an elusive factor, and that information in fact is not now available or at least it is not broken out. As a result of this amendment, it will be, and will be available to us.

I believe, Mr. Chairman, it is a good amendment. I believe it is a fair amendment. It is not the amendment which I had originally suggested, but I believe that it is a reasonable compromise that gets us the same information and in a reasonable manner.

Now, that was presented in the bill and accepted. Thereafter, year before last, when we had on the last occasion before the Senate product liability, that amendment, word for word, was presented and accepted. Presented by this Senator at that particular time as the chairman of the Commerce Committee and accepted by none other than the two distinguished leaders that we have, the cosponsors and managers of the bill, the distinguished Senator from West Virginia and the distinguished Senator from Washington.

My hope, of course, that the amendment was accepted, it would be accepted again. Perhaps we will have to vote on it. However, it would nonplus this particular Senator that here we have what the managers themselves have not only promulgated but what they

have accepted heretofore as a reasonable, proper, and necessary add on to the consideration of product liability and now rejected at this particular time. With that in mind, I yield the floor.

AMENDMENT NO. 599, AS MODIFIED, TO
AMENDMENT NO. 596

Mr. HATCH. Mr. President, I ask unanimous consent that the pending amendment be set aside to call up this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Mr. President, I ask unanimous consent that amendment numbered 599, as previously agreed to, be modified with the language which I now send to the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 599), as modified, is as follows:

At the appropriate place, insert the following new section:

**SEC. . REPRESENTATIONS AND SANCTIONS
UNDER RULE 11 FEDERAL RULES OF
CIVIL PROCEDURE.**

(a) IN GENERAL.—Rule 11 of the Federal Rules of Civil Procedure is amended—

(1) in subsection (b)(3) by striking out “or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery” and inserting in lieu thereof “or are well grounded in fact”; and

(2) in subsection (c)—
(A) in the first sentence by striking out “may, subject to the conditions stated below,” and inserting in lieu thereof “may”;
(B) in paragraph (2) by striking out the first and second sentences and inserting in lieu thereof the following: “A sanction imposed for violation of this rule may consist of reasonable attorneys’ fees and other expenses incurred as a result of the violation, directives of a nonmonetary nature, or an order to pay penalty into court or to a party.”; and

(C) in paragraph (2)(A) by inserting before the period “, although such sanctions may be awarded against a party’s attorneys”.

(b) EFFECTIVE DATE.—The provisions of this section shall take effect 30 days after the date of the enactment of this Act.

Mr. HATCH. Mr. President, this amendment was offered by Senator BROWN and adopted by the Senate earlier this week. We have consulted with Senator BROWN and he has agreed to our modification.

Section (2)(A) of Senator BROWN’s amendment would make the imposition of sanctions for a violation of Federal Rule of Civil Procedure 11 mandatory. The current Federal rule gives Federal judges discretion to award sanctions if a violation has occurred. This amendment simply restores discretion to our Federal judges to award sanctions in the appropriate cases.

AMENDMENT NO. 683 TO AMENDMENT NO. 596

(Purpose: To revise the rules regarding claimants who are employees)

Mr. GORTON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The pending amendments will be set aside and the clerk will report.

The legislative clerk read as follows:

The Senator from Washington [Mr. GORTON] proposes an amendment numbered 683 to amendment No. 596.

Mr. GORTON. I ask unanimous consent further reading be dispensed.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 2, strike lines 4 through 14 and insert the following:

(2) CLAIMANT’S BENEFITS.—The term “claimant’s benefits” means the amount paid to an employee as workers’ compensation benefits.

On page 25, line 15, strike “CONSENT” and insert “NOTIFICATION”.

On page 25, beginning with “subparagraph” on line 16 strike through line 25 and insert “subparagraph (C), an employee shall not make any settlement with or accept any payment from the manufacturer or product seller without written notification to the employer.”.

Mr. GORTON. Mr. President, this is a corrective amendment with respect to the subrogation provisions of the workmen’s compensation section. I have checked this out with the distinguished Senator from South Carolina. It is not controversial.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 683) was agreed to.

AMENDMENT NO. 684 TO AMENDMENT NO. 596

(Purpose: To modify the rented or leased products provision)

Mr. GORTON. Mr. President, I send another amendment to the desk for immediate consideration, and I ask the pending amendment be set aside.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Washington [Mr. GORTON], proposes an amendment numbered 684 to amendment No. 596.

Mr. GORTON. I ask unanimous consent further reading be dispensed.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 16, line 21, after “but” insert “any person engaged in the business of renting or leasing a product”.

Mr. GORTON. Mr. President, this falls under the same category, dealing with the definition of a rental.

I have checked it out with Senator HOLLINGS and it is acceptable and agreed to and not controversial.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 684) was agreed to.

ORDERS FOR THURSDAY, MAY 4,
1995

Mr. DOLE. Mr. President, I ask unanimous consent that the vote on or in relation to the Abraham amendment No. 600, occur at 12:15 on Thursday, May 4, followed by a vote on or in relation to the Kyl amendment No. 681, to

be followed by a vote on or in relation to the Hollings amendment No. 682, to be followed by a motion to invoke cloture on the Gorton substitute No. 596.

The PRESIDING OFFICER. Is there objection?

Mr. HEFLIN. Reserving the right to object, is the Kyl amendment relative to alternate dispute resolution proceedings?

Mr. GORTON. Yes, it is.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. I further ask that all votes occurring in the stacked sequence following the first vote be limited to 10 minutes in length.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. I further ask that following the first cloture vote, if not invoked, the time following the vote at 2 p.m. be equally divided in the usual form for debate only; at 2 p.m. the Senate proceed to vote on the second cloture motion; and the mandatory forum under rule XXII be waived for both cloture votes.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. DOLE. For the information of all Senators, there will be no further votes tonight. However, Senators who wish to offer their amendments may do so tonight.

Also, Members should be aware that second-degree amendments must be filed 1 hour prior to the cloture vote under the provisions of rule XXII.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GORTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 685 TO AMENDMENT NO. 596

(Purpose: To toll the statute of limitations in certain actions brought against a product seller as manufacturer)

Mr. GORTON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the pending amendments will be set aside. The clerk will report.

The legislative clerk read as follows:

The Senator from Washington [Mr. GORTON] proposes an amendment numbered 685 to Amendment No. 596.

Mr. GORTON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 16, between lines 14 and 15, insert the following: "For purposes of this subsection only, the statute of limitations applicable to claims asserting liability of a product seller as a manufacturer shall be tolled from the date of the filing of a complaint against the manufacturer to the date

that judgment is entered against the manufacturer."

Mr. GORTON. Mr. President, this is the third in a series. This is a technical amendment that tolls the statute of limitations in connection with a possible claim against a wholesaler when a manufacturer is bankrupt or judgment proof. It has been cleared by Senator ROCKEFELLER and by the opponents to the bill.

THE PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 685) was agreed to.

Mr. GORTON. Mr. President, I move to reconsider the vote.

Mr. FORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. GORTON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GORTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. GORTON. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business with Senators permitted to speak for up to 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Zaroff, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate a message from the President of the United States submitting a nomination which was referred to the Committee on Foreign Relations.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT OF PROPOSED LEGISLATION ENTITLED "THE IMMIGRATION ENFORCEMENT IMPROVEMENTS ACT OF 1995"—MESSAGE FROM THE PRESIDENT—PM 44

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on the Judiciary.

To the Congress of the United States:

I am pleased to transmit today for your immediate consideration and enactment the "Immigration Enforcement Improvements Act of 1995." This legislative proposal builds on the Administration's FY 1996 Budget initiatives and complements the Presidential Memorandum I signed on February 7, 1995, which directs heads of executive departments and agencies to strengthen control of our borders, increase worksite enforcement, improve employment authorization verification, and expand the capability of the Immigration and Naturalization Service (INS) to identify criminal aliens and remove them from the United States. Also transmitted is a section-by-section analysis.

Some of the most significant provisions of this proposal will:

- Authorize the Attorney General to increase the Border Patrol by no fewer than 700 agents and add sufficient personnel to support those agents for fiscal years 1996, 1997, and 1998.
- Authorize the Attorney General to increase the number of border inspectors to a level adequate to assure full staffing.
- Authorize an Employment Verification Pilot Program to conduct tests of various methods of verifying work authorization status, including using the Social Security Administration and INS databases. The Pilot Program will determine the most cost-effective, fraud-resistant, and nondiscriminatory means of removing a significant incentive to illegal immigration—employment in the United States.
- Reduce the number of documents that may be used for employment authorization.
- Increase substantially the penalties for alien smuggling, illegal reentry, failure to depart, employer violations, and immigration document fraud.
- Streamline deportation and exclusion procedures so that the INS can expeditiously remove more criminal aliens from the United States.
- Allow aliens to be excluded from entering the United States during extraordinary migration situations or when the aliens are arriving on board smuggling vessels. Persons with a credible fear of persecution in their countries of nationality would be allowed to enter the United States to apply for asylum.
- Expand the use of the Racketeer Influenced and Corrupt Organizations (RICO) statute to authorize its use to pursue alien smuggling organizations; permit the INS, with judicial authorization, to intercept wire, electronic, and oral communications of persons involved in alien smuggling operations; and make subject to forfeiture all property, both real and personal, used or intended to be used to smuggle aliens.